IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cri. Appeal No. 663 of 2000

Date of Decision: 23rd October, 2007

State of Himachal Pradesh	Appellant
Versus	
Sudershana Devi and others	Respondents

Coram

The Hon'ble Mr. Justice Sanjay Karol, J.

Whether approved for reporting[1]? No.

For the appellant: Mr.Virender Verma, Addl. Advocate General.

For the respondent: Mr.Virender Rathore, Advocate.

Sanjay Karol, J. (Oral)

The present appeal arises out of the judgment dated 3rd January, 2000, passed by Judicial Magistrate, Ist Class-I, Dharamshala, in Cri. Case No. 21-II/98, titled as State of H.P. vs. Sudershana Devi and others, acquitting the accused of the charged offence.

Briefly stated the case of the prosecution is that on 13th April, 1997 at about 5 p.m. Bhagwan Singh (PW-5), the lineman of the electricity Board has come to repair the light of the complainant. To access the faulty line the said lineman asked the complainant to clear the standing water on his lintel and for the said purpose he removed a brick as a result of which water felled down on the house of accused No.1 Sudarshana Devi. Rajeev and Pardeep Kumar, accused Nos. 2 and 3 sons of accused No.1 started throwing bricks at the complainant as a result of which he was hurt on the chest and sustained

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

injuries. Thereafter, the accused got an axe and gave blow with the same on the same on the arm of the complainant thus causing an injury. The incident took place in the heart of the town where there were houses belonging to other persons and many persons including one Ramesh Kumar and his wife came at the spot at the time of occurrence. The matter was reported to the police and FIR No.48/1997 was registered with Police Station Shahpur under Sections 325, 324 read with Section 34, IPC. The investigation was carried out by ASI Vam Dev (PW-11) and the accused was got medically examined. Om Parkash (PW-9) was medically examined by Dr. Ajay Dutta (PW-1) and his MLC (Ext.PW-1/B) and x-ray report (Ext.PW-1/A) were taken by the police during investigation. After completion of the investigation, challan was filed in the Court.

All the accused were charged for an offence under Sections 325 read with Section 34 and 341, IPC. The accused did not plead guilty and the matter was put to trial.

In order to prove its case, the prosecution examined 11 witnesses. Statements of accused under Section 313, Cr.P.C. were also recorded and the defence is that the witnesses have falsely deposed due to animosity between the parties.

The Court below, after examining the depositions of the witnesses as also the matter on record came to the conclusion that the prosecution had failed to prove its case beyond doubt for the reason that out of seven witnesses, who had witnessed the incident, four had been declared hospital and in their cross-examination nothing could be brought out which would prove the guilt of the accused. Further the relation between the parties was hostile, they were not on speaking terms and there was animosity between them. Prior to the incident the accused had filed a complaint against the

complainant in relation to an incident where the complainant had thrown stones on the accused persons.

Dr. Ajay Dutta (PW-1) has examined Om Parkash. According to him, he had suffered injuries both simple and grievous but the accused had not been charged for the same. PW-10 SI Dharam Chand and ASI Vam Dev (PW-11) are police officials, who have investigated the matter and have deposed about the lodging of reports (Ext.PW-6/A) and (Ext.PW-6/B). Tilak Raj (PW-2), Ravi Kumar (PW-3), Bhagwan Singh (PW-5) and Rakesh Kumar (PW-7) are the witnesses, who were present at the site of occurrence. Perusal of their statements would show that they have not supported the case of the prosecution at all inspite of the fact that they were declared hostile and extensively cross-examined by the public prosecutor.

Therefore, the statements of the remaining three witnesses i.e. Om Parkash (PW-9), his wife Raksha Devi (PW-4) and Ramesh Chand (PW-8) need to be examined in the back ground that no independent witness of the incident has admitted that the accused had lodged a complaint prior to the date of incident. He has admitted that his house is above the house of the accused persons. He has admitted that the person throwing the stone from the floor below his front is not visible. Further it has come in his statement that brick thrown by accused No.1 hit him on his chest with which he was hurt. However, when confronted, he admitted that this fact has not recorded in the FIR, therefore, there is improvement in his statement. Ramesh Chand (PW-8) who was present at the time of the occurrence of the incident has not specified which of the accused persons had thrown the brick with which PW-9 was hurt. Statement of PW-4 would show that she has not specified the particular role played by the accused persons in the commission of crime. In her cross-examination, however, she has stated that it was Pardeep and Rajeev, who had

given three blows of axe. This fact does not find mention in her statement recorded under Section 161, Cr.P.C. and she has been confronted with the same. There is thus improvement in her statement. Further, she has mentioned that there were about 20-25 people who had gathered at the time of incident. The police has not associated the said persons for the reasons which are not borne out from the record. In fact she has admitted that she had not seen her husband being hit by brick and getting hurt. Her statement that accused had given three blows stands contradicted through MLC (Ext.PW-1/B), which mentions only injuries. Thus the statement of the witness does not inspire confidence. The contradictions are vital rendering the prosecution case to be false. The case against the accused does not stand proved beyond reasonable doubt.

The accused have the benefit of being acquitted by the Court below. The Court below has correctly appreciated the facts and material on record while arriving at its conclusion. I see no perversity in the same and the appeal is accordingly dismissed. The bail bonds stand discharged.

23rd October, 2007 (Sanjay Karol),
(C) Judge.